DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE OF CONNECTICUT

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House Bill 5401
An Act Concerning Leasebacks and the Prevailing Wage Threshold

Joint Committee on Labor and Public Employees
March 13, 2012

The Department of Administrative Services ("DAS") offers the following testimony in connection with House Bill No. 5401, An Act Concerning Leasebacks and the Prevailing Wage Threshold.

DAS is charged with the duty of acquiring by lease, purchase or within existing state facilities, space for state agencies under Chapter 59 of the Connecticut General Statutes. Lease transactions can take different forms, from a lease purchase arrangement to a more typical lease of space. In a lease purchase transaction, the rent paid by the state reimburses the property owner/lessor for the full purchase price agreed upon at the inception of the agreement, together with the full cost of agreed upon improvements. When leasing space, DAS and the user agency, working with the lessor, determine the changes that need to be made to the leased space in order for it to be suitable to the needs of the user agency. In making the needed tenant improvements, the lessor hires and supervises all contractors, obtains any and all permits, retains liability for the work and payments, and is responsible for all cost overruns. The lessor, in addition, remains responsible for the structure of the building, operational systems, roof and other features deemed capital items. The state pays the lessor a fixed sum during the term of the lease for the improvements that are not capital items.

United States Code, Title 40, Sections 3142 and following, commonly referred to as the "Davis-Bacon Act," have been adopted in relevant part in the Connecticut General Statutes Section 31-53 et seq., which is known as Connecticut's "Little Davis-Bacon Act." Neither the Davis-Bacon Act nor Connecticut's Little Davis-Bacon Act specifically references leases or the application of the prevailing wage laws to lease agreements between a government entity and a private party. The federal courts and the United States Departments of Labor and Justice have ruled, however, that certain lease agreements to which a government entity is a party, may be subject to prevailing wage law. These rulings prescribe a comprehensive analysis be undertaken to determine whether a particular lease agreement is subject to prevailing wages.

DAS has utilized this prescribed analysis for its lease transactions on behalf of state agencies to decide if the lessor or its agents are required to pay prevailing wages for the construction of tenant improvements. The application of prevailing wages to lease agreements increases the cost and administrative work for the lessor and the state, and makes the difficult and protracted processes involved in lease transactions even more so. Despite these impacts, DAS requires prevailing wage when mandated by the requisite analysis.

DAS' concern with HB 5401 focuses on the proposed language found in subdivision (2)(B). This subdivision provides that the prevailing wage provisions of Sec. 31-53 do not apply where the total cost of all work to be performed by all contractors and subcontractors in connection with "(B) new construction of any project to be leased during such time period, by the state or any of its agents, ...is less than seven hundred fifty thousand dollars". The inclusion of specific language regarding lease agreements entered into by the state (or a political subdivision) is a significant alteration to the statute.

To the extent that this new language is meant to mandate the application of prevailing wages to new construction involving lease agreements, then the provision conflicts with the federal decisions requiring a more sophisticated and complex analysis as to the applicability of prevailing wages to such transactions. While the intention may have been to simply raise the prevailing wage threshold for new construction for a limited duration, and to make clear that this would include new construction for lease agreements, the provision could be construed that prevailing wages must necessarily apply to lease transactions above the threshold. Accordingly, this language is problematic for DAS.

DAS respectfully suggests that the well-established federal law, requiring the comprehensive analysis of lease transactions is a more appropriate approach, because it accounts for the differing circumstances involved in particular lease agreements.

Thank you for your consideration of DAS's views regarding this bill. We would be happy to meet with the Committee at any time to discuss it further.